IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 1213 of 1984

For Approval and Signature:

HONOURABLE MR.JUSTICE KS JHAVERI

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SABIRMIYA MOHMEDMIYA - MINOR THRO' MOHMEDMIYA M. MALEK - Appellant(s)
Versus
PARSHOTTAMBHAI GOKALBHAI PATEL & 1 - Defendant(s)

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Appearance :
MR PM THAKKAR for Appellant(s) : 1,
NOTICE SERVED for Defendant(s) : 1,
MR MD PANDYA for Defendant(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE KS JHAVERI

Date : 24/08/2006

ORAL JUDGMENT

1.0 By way of this appeal, the appellant has challenged the judgment and award of the Motor Accident Claims Tribunal(Main), Nadiad passed in M.A.C.P. No. 499 of 1982 dated 2nd September, 1983 whereby the Tribunal partly allowed the said petition.

2.0 The brief facts of the case are that on 21.12.1981, when the appellant was going towards

Nutan Tiles from Court Compound, he was dashed by a bus driven by present opponent No.1 and present opponent No.2. On account of the said, the appellant received serious bodily injuries, and hence, the appellant through his parent filed a petition claiming an amount of Rs.1,00,000/- by way of compensation.

2.1 In the said petition, after hearing the parties, the Tribunal passed the judgment and award which is under challenge in this appeal.

3.0 Heard. It was the case of the appellant before the Tribunal that on 21.12.1981 when he was going towards Nutan Tiles from Court Compound, he was dashed by a bus driven by opponent No.1. From the documents placed on record it transpires that the accident in question took place in broad day-light and that the appellant was aged about three years only at the relevant time. Hence, it was incumbent on the driver of the offending vehicle to take necessary

precaution while plying the vehicle on a public road. Moreover, the story put forward by the appellant is not challenged by the opponents. Hence, the Tribunal was justified in coming to the conclusion that the appellant had received injuries on account of the negligence on the part of the opponent No.1, and hence, he is entitled for compensation. The Tribunal, therefore, awarded an amount of Rs.56,117/- by way of compensation.

3.1 Learned Advocate for the appellant has raised contention that the Tribunal ought to have awarded some higher amount under the head of pain, shock and suffering and towards the treatment of the appellant at Nadiad. As regards the aspect of compensation under the head of pain, shock and suffering is concerned, the Tribunal has awarded an amount of Rs.25,000/- under the said head taking into consideration the fact that one of the legs of the appellant was mutated below knee and he had to remain in

hospital for about 92 days. Hence, the compensation awarded by the Tribunal under the said head is just and proper. As regards the aspect of compensation towards treatment of the appellant in hospital at Nadiad is concerned, the appellants has not produced any documentary evidence on record in support of his case, and hence, the said contention requires to be rejected.

3.2 As regards the contention of the learned Advocate for the appellant that the Tribunal ought to have awarded some higher amount under the head of loss of future income is concerned, it would be relevant to refer to a decision of the Apex Court in the case of ***"U.P. State Road Transport Corporation & Ors. Vs. Trilok Chandra & Ors."*** reported in 1996 (4) SCC 362 [1996 (3)GLR 136]. In that decision the Court reiterated the method of working out as to what would be a 'just' compensation.

3.3 Applying the principle laid down in the aforesaid decision, the Tribunal ought to have assessed the average daily income of the appellant at Rs.10/- per day, and hence, the Tribunal ought to have taken monthly income of the appellant at Rs.375/- i.e.([Rs.250 X 2] + 250 = Rs.750) [750/2 =Rs.375]). Now, since the appellant has sustained 50 per cent disability of the body as a whole, the monthly loss of income sustained by the appellant would come to Rs.375/- (375-50% disability = Rs.187.5)i.e. Rs.2250/- loss of income per year. The appellant was aged 4 years at the time of accident, and hence, the Tribunal has adopted a multiplier of 15 years. Looking to the age of the appellant the multiplier adopted by the Tribunal is just and reasonable. Hence, the total loss of future income would come to Rs. 33,750/- i.e. (Rs.2250 X 15 years = 33,750/-). Since, the Tribunal has, already, awarded Rs.27,000/-, the appellant shall be entitled for an additional amount of(Rs.33,750 – 27,000)= Rs.6,750/- under the said head.

4.0 In the result, the appeal is partly allowed. The appellant shall be entitled to an additional amount of Rs.6,750/- towards compensation at the rate of six per cent interest from the date of application before the Tribunal till realization. No order as to cost.

(K.S. Jhaveri,J.)

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